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October 27, 2000

**VIA HAND DELIVERY**

Ms. Magalie R. Salas  
Secretary  
Federal Communications Commission  
The Portals II  
445 - 12<sup>th</sup> Street, S.W.  
Room TW-A325  
Washington, D.C. 20554

Dear Ms. Salas

On behalf of Mt. Wilson FM Broadcasters, Inc., licensee of station KMZT-FM, Los Angeles, California, there are herewith transmitted an original and four copies of a "Petition to Supplement Record" in the outstanding rulemaking proceeding pertaining to the establishment of rules and policies for the digital audio radio satellite service.

Yours very truly



Robert B. Jacobi

RBJ:btc

Enclosures

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OCT 27 2000

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

BEFORE THE

# Federal Communications Commission

In the Matter of:

Establishment of Rules and Policies for the  
Digital Audio Radio Satellite Service in the  
2310-2360 MHz Frequency Band

IB Docket No. 95-91  
GEN Docket No. 90-357

## PETITION TO SUPPLEMENT RECORD

Mt. Wilson FM Broadcasters, Inc., licensee of station KMZT-FM, Los Angeles, California ("Mt. Wilson") by its attorneys, hereby submits the attached public information for inclusion in the record of the above-captioned proceeding.

The public information consists of an "article" reported in the October 19, 2000 issue of R&R Today. The article references the comments of Michael Haynes, Vice President/Treasurer of Sirius Satellite Radio ("Sirius") to the effect that if Sirius does not achieve the 2 million subscribers necessary to break even, the system's technology "... would require significant system redesign to include local advertising inserts."

Local advertising can be achieved through the use of terrestrial repeaters. The Report and Order, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking (IB Docket No. 95-91, GEN Docket No. 90-357, RM No. 86-10, adopted

March 3, 1997, 12 FCC Rcd. 5754, hereinafter, Report and Order) included the following:

At paragraph 23: "Local advertising revenue is much more important than national advertising revenue for terrestrial radio's viability and prevalence and, at this time, we have no evidence that satellite DARS would be able to compete for local advertising revenue.";

At paragraph 140: "Satellite DARS applicants provided additional information on how terrestrial gap-fillers will be used with their satellite DARS systems. The commenters agree that terrestrial repeaters would be used to improve satellite DARS service in the authorized satellite coverage areas only and on the same frequencies, and that they would not be used to extend the satellite coverage area or be used to originate programming. CD Radio and DSBC maintain that terrestrial gap-fillers will only be complementary to the satellite DARS systems because they will operate on the same frequency as the satellite transmission and only retransmit the signals of operating satellite DARS space stations to improve service link margin in difficult propagation environments, especially in urban areas. Additional spectrum is therefore unnecessary for satellite DARS gap-fillers. Primosphere asserts further that no commercial inserts or local programming would be permitted over terrestrial gap-fillers. Furthermore, terrestrial gap-fillers will not extend satellite DARS coverage outside of the system's already authorized service area. AMRC asserts that they will be used only to fill in coverage gaps within the authorized service area caused by various signal obstructions.";

At paragraph 184: "We certify that the proposed rules relating to the authorization of terrestrial repeaters will not have a significant economic impact on a substantial number of small entities."

The Comments of CD Radio (filed June 13, 1997), Section II, page 3 state as follows:<sup>1/</sup>

"As the Commission recognized in the Satellite DARS Order, CD radio and the other satellite DARS applicants have assured the Commission that they will use terrestrial gap fillers for the sole purpose of retransmitting the signals of their satellites. Terrestrial devices will not be used to originate programming."

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<sup>1/</sup> CD Radio is now Sirius Satellite Radio.

The Reply Comments of CD Radio (filed June 27, 1997), Section I, page 2, state as follows:

“In fact, the commenters expressed nearly unanimous support for the adoption of rules that permit the use of terrestrial repeaters so long as they only retransmit the signals of the operating satellites, receive input signals solely from the satellite DARS satellites, and are not used to originate programming.”

The position articulated by Michael Haynes, an officer of Sirius, contradicts the representations made to the Commission in 1997 and is in contradiction to the Commission’s understanding of the position advanced by the DARS applicants (Paragraph 140 of the Report and Order). The prospective use of terrestrial repeaters to accommodate local advertising inserts contradicts the representation to retransmit only the signals of operating satellites, contradicts the representation to receive input signals solely from the satellite DARS satellites and contradicts the representation not to originate programming.

Clearly, the Commission was concerned about the economic impact on terrestrial radio stations resulting from the loss of local advertising revenue (Report and Order, Paragraph 23). In 1997, however, the Commission side-stepped the issue on the basis that there was no evidence that satellite DARS would be able to compete for local advertising revenue. Indeed, the Commission conclusion was buttressed by its understanding of the explicit representations from DARS applicants as to the use of terrestrial repeaters. As of October, 2000, however, the Commission now has evidence

directly from a DARS operator that it will compete for local advertising revenues in order to break even. Moreover, the now revealed Sirius intent to compete for local advertising revenues undermines the Commission's certification at paragraph 184 of the Report and Order. If the Commission adopts rules to permit local advertising inserts, it cannot certify that terrestrial repeaters "... will not have a significant economic impact on a substantial number of small entities" – absent a further rulemaking proceeding (see Paragraph 23, Report and Order).

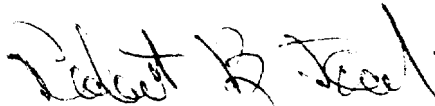
The outstanding Report and Order sought Comments on the proposed rules for the DARS service and, specifically, Comments "... on our tentative conclusion to prohibit the use of terrestrial repeaters to transmit locally originated programming which would be inconsistent with the allocation of the spectrum" (Paragraph 142). The proposed rule (Section 25.144(e)) states in part as follows:

"(e) Licensing of satellite DARS complementary terrestrial repeaters. Satellite DARS licensees may construct and operate terrestrial transmitters to retransmit signals received from their operating DARS satellite(s) on the exclusive frequency assignment of the licensee and for use of the same bandwidth as the satellite space stations(s). Terrestrial gap-fillers shall not be used to originate programming or transmit signals other than those received from the authorized DARS satellite. Nor shall terrestrial gap[-]fillers be used to extend satellite DARS coverage outside of the satellite systems' authorized service area. Terrestrial gap-fillers may be implemented by a satellite DARS licensee only after obtaining prior Commission authorization and the licensee demonstrates the following: . . ."

To avoid any misunderstanding as to the meaning of the rule, the prospective Report and Order in this proceeding should unequivocally make clear the Commission's intent not to permit the use of terrestrial repeaters to originate programming, including the carriage of

local advertising inserts. The remarks of Michael Haynes in October, 2000 evidences the fact that Sirius either does not understand the tenor of the proposed rule or intends to ignore any such rule. Sirius made misrepresentations to the Commission in 1997 the effect of which was to mislead the Commission and now, three years later, has changed its marketing strategy. In 1997, the Commission Report and Order (pertaining to the use of terrestrial repeaters) was based upon an understanding (or misunderstanding) as to the DARS applicants' representations. The final rules must leave no ambiguity.

Respectfully submitted



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Date: October 27, 2000

# R&R TODAY

*The Daily Digest Of The Radio Industry*

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THURSDAY

Oct. 19, 2000

## ROUTE 10:

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## Radio Stocks Rebound Amid Sinking Dow

The R&R composite index soared 18.17 to 212.14 yesterday as radio issues across the board experienced impressive rebounds. Among the top performers: Viacom (B), which gained 14%; Fmnnis, up almost 16%; Citadel, which increased 13%; Infinity, which rose 12%; Entercom, up more than 12%; and Clear Channel, which jumped almost 8% to miss closing at \$50 by just 25 cents. But while the radio stocks were on the rise, the Dow fell 114.69 to 9975.02 — closing below 10,000 for the first time since March — partly due to IBM's failure to meet its Q3 revenue target. The Dow had fallen as much as 433 points earlier in the day. *Complete radio stock details: Page 2.*

## Frank Wood Explains Feed The Monster Shutdown

Speaking at the Kagan seminar in New York, the FTM Chairman said the website development company shut its doors after running out of money because "no company wanted to take a cash flow hit to pay what it cost [to keep FTM afloat]." Wood said he underestimated the resources needed for FTM to design and build the elaborate sites it became known for: "They just cost too much to build up."

## Digital Broadcasting Rules Should Clear FCC In January

That's according to iBiquity Digital CEO Bob Struble, who told Kagan attendees he expects equipment manufacturers to begin taking orders from groups during the NAB's Las Vegas show in April. Radio broadcasters will like the conversion, he said, because costs are relatively low — between \$20,000 and \$300,000 — and digital broadcasting will allow them to datacast, creating new streams of revenue.

## Sirius Satellite Radio On Track For Q1 Debut

VP/Treasurer Michael Haynes says the satellite broadcaster is set to begin its 100-channel digital service as early as January. Haynes reassured broadcasters at the Kagan seminar that Sirius does not intend to deliver local content, but he acknowledged that if Sirius does not achieve the 2 million subscribers necessary to break even, the system's technology "would require significant system redesign to include local advertising inserts." However, he predicts Sirius will have 10 million to 20 million subscribers within three to five years.

## Infinity Sells KRAK/Sacramento To ABC

Infinity had seven stations in the market and had to divest one. Following news of the sale, the station dropped its Classic Country format and began simulcasting with Country sister KNCL.

## Rockline Joins MJI Broadcasting Lineup

The program had been distributed by AMFM Radio Networks but now goes under the MJI umbrella as a result of Clear Channel's merger with AMFM. MJI has been a division of Clear Channel since Premiere acquired it last year.

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## CERTIFICATE OF SERVICE

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